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Bohari Jaya & Ors v Naim Land Sdn Bhd & Ors

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HIGH COURT (MIRI) — SUIT NO MYY-21–5/4 OF 2012
STEPHEN CHUNG JC
2 MAY 2014

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Land Law — Customary land — Claim of — Native customary rights ('NCR') — Claim to — Whether established on balance of probabilities — Failure to identify exact parcel of land — Failure to produce documents to support claim — Failure to prove acquisition of land by great grandparents — Failure to produce proper family tree — Failure to object to logging carried on upon claimed land — Failure to protect interests in claimed land — Whether NCR acquired

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The plaintiffs claimed an area of land comprising 161.32 acres more or less situate at Sungai Adong, Pujut, Miri as their native customary rights ('NCR') land. The plaintiffs pleaded that the second, third and fourth plaintiffs were the children of the first plaintiff. The remaining plaintiffs were cousins, nephews and nieces of the first plaintiff. The plaintiffs testified that they had inherited the NCR land from their parents or grandparents who had settled on the land during the Japanese occupation in Sarawak. Lot 6434 Block 10 Kuala Baram Land District and Lot 3247 Block 11 Kuala Baram Land District were alienated to the first defendant on 20 July 1995 and Lot 819 Block 13 Kuala Baram Land District was alienated to the first defendant on 21 August 1997. These three parcels of land were approved for development as the Tudan Special Development Area vide *gazette* notification Swk LN 115 published on 27 December 2001. The first defendant produced *gazette* notification No 1806 published in the Sarawak Government *Gazette* dated 8 October 1965 which declared an area of 105,500 acres as the Lower Baram Forest Reserve (Third Extension) including Sg Adong and Sg Adong Kechil. It stated that 'the following people may farm in the existing temuda situated in Sungai Adong Besar and Sungai Adong Kechil' which included 'Surin bin Jamban of Pujut to farm at Sungei Adong Besar'. The second and third defendants produced a locality map of the plaintiffs' claimed NCR land within the forest areas covered by Timber Licence No T/0003 issued to Chip Foh Sm Co Ltd on 1 January 1966.

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Held, dismissing the plaintiffs' claim with costs:

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(1) The plaintiffs did not have any personal knowledge on the acquisition of the NCR land by their great or grandparents except what they had been told by their parents. The plaintiffs did not produce any documents to support their claim to the NCR land in particular to the acquisition of

the land by their great grandparents prior to 1 January 1958. The plaintiffs did not produce any birth certificate of the first plaintiff that he was born at the NCR land at Sg Adong claimed by them. The eighth and 11th plaintiffs did not have any birth certificate to confirm that they were born at the said NCR land. The birth certificates of the plaintiffs showed that none of them were born at the NCR land claimed by them or at Sg Adong. In fact the birth certificate of the tenth plaintiff showed that he was born at Kampung Pujut, Miri which contradicted his testimony that he was born at the NCR land claimed by them (see paras 14–15).

(2) The plaintiffs produced their family tree from their grandmother's side and not from their grandfather's side of the family. This family tree did not show the siblings of their grandfather. This family tree had not been certified by any *ketua kampong* or the District Office that it was correct (see para 16).

(3) The plaintiffs pleaded that their claimed NCR land was at Sg Adong. They did not specifically plead that their claimed NCR land was situated at Sg Adong Besar or at Sg Adong Kechil. They also did not plead or lead any evidence that they were allowed to farm the temuda land at Sg Adong or that their grand parents' or parents' names were listed in the *gazette* to allow them to farm at its land. They also did not plead that they were related to Surin Jamban or had claimed their NCR land under Surin Jamban (see para 17).

(4) The areas within the forest licence including the NCR land claimed by the plaintiffs had been logged by this company since 1966. Since then the plaintiffs did not complain or take any action that their NCR land had been wrongfully logged or trespassed by Chip Foh Sm Co Ltd or that the second and third defendants had wrongfully issued the timber licence without their consent or without any compensation to them for the timber extracted from their NCR land (see para 19).

(5) The plaintiffs did not complain or take any action against the defendants for the alienation of their land to the first defendant or for their land to be developed without any compensation to them. If the plaintiffs had a genuine or credible claim to the land, they should have taken action to protect their interests in the land as soon as possible. Despite the land claimed by them as their NCR had been included in the Lower Baram Forest Reserve, given to a company for logging and subsequently alienated to the first defendant, the plaintiff did not do so. They sat on their rights for nearly forty seven years. These raised serious doubts on their claims to the land (see paras 20–21).

(6) The plaintiffs have not been able to identify their respective parcel(s) of land to belong to them. Again this raised doubts on their credibility and claims to the land (see para 22).

(7) On a balance of probabilities, the plaintiffs had not established that they had acquired and or inherited NCR over their claimed land. Based on the evidence adduced during the trial, Sapiee bin Gani and the first plaintiff had only farmed at the land claimed by them at Sg Adong about 10 to 15 years ago. There was no documentary proof or otherwise that their great grandparents had settled or cultivated the land at Sg Adong claimed by them since 1947 or before by them. The evidence adduced at the trial showed that they had not acquired NCR over the land in accordance with the laws in Sarawak (see para 26).

[Bahasa Malaysia summary

Plaintif-plaintif menuntut kawasan tanah meliputi 161.32 ekar yang lebih kurang terletak di Sg Adong, Pujut, Miri sebagai tanah hak adat anak watan mereka ('HAAW'). Plaintif-plaintif mempli bahawa plainif-plaintif kedua, ketiga dan keempat adalah anak-anak kepada plaintif pertama. Plaintif-plaintif yang lain merupakan sepupu-sepupu, anak-anak saudara kepada plaintif pertama. Plaintif-plaintif memberi keterangan bahawa mereka telah mewarisi tanah HAAW itu daripada ibubapa atau datuk nenek mereka yang telah menduduki tanah tersebut semasa pendudukan Jepun di Sarawak. Lot 6434 Blok 10 Daerah Tanah Kuala Baram dan Lot 3247 Blok 11 Daerah Tanah Kuala Baram telah diberi milik kepada defendan pertama pada 20 Julai 1995 dan Lot 819 Blok 13 Daedah Tanah Kuala Baram telah diberi milik kepada defendan pertama pada 21 Ogos 1997. Ketiga-tiga bidang tanah tersebut telah diluluskan untuk pembangunan sebagai Kawasan Pembangunan Khas Tudan melalui Pemberitahuan Warta Swk LN 115 yang diterbitkan pada 27 Disember 2001. Defendan pertama telah mengemukakan pemberitahuan warta No 1806 yang diterbitkan dalam Warta Kerajaan Sarawak bertarikh 8 Oktober 1965 yang mengisytiharkan kawasan seluas 105,500 ekar itu sebagai Hutan Simpan Baram Bawah (Lanjutan Ketiga) termasuklah Sg Adong dan Ag Adong Kechil. Ia menyatakan bahawa 'the following people may farm in the existing temuda situated in Sg Adong Besar and Sg Adong Kechil' which included 'Surin bin Jamban of Pujut to farm at Sg Adong Besar'. Defendan-defendan kedua dan ketiga telah mengemukakan peta kawasan tanah HAAW yang dituntut plaintif-plaintif dalam kawasan hutan yang dilindungi oleh Lesen Pembalakan No T/0003 yang telah dikeluarkan kepada Chip Foh Sm Co Ltd pada 1 Januari 1966.

Diputuskan, menolak tuntuan plaintif-plaintif dengan kos:

(1) Plaintif-plaintif tidak mempunyai pengetahuan peribadi tentang pemerolehan tanah HAAW oleh nenek moyang mereka kecuali apa yang diberitahu oleh ibu bapa mereka. Plaintif-plaintif tidak mengemukakan apa-apa dokumen untuk menyokong tuntutan mereka ke atas tanah HAAW itu khususnya berhubung pemerolehan tanah itu oleh nenek moyang mereka sebelum 1 Januari 1958. Plaintif-plaintif tidak

mengemukakan apa-apa sijil kelahiran plaintif pertama bahawa dia telah dilahirkan di tanah HAAW di Sg Adong yang dituntut oleh mereka. Plaintif-plaintif kelapan dan ke-11 tidak mempunyai apa-apa sijil kelahiran untuk mengesahkan bahawa mereka telah dilahirkan di tanah HAAW itu. Sijil-sijil kelahiran plaintif-plaintif menunjukkan bahawa tiada antara mereka yang dilahirkan di tanah HAAW yang dituntut oleh mereka atau di Sg Adong. Bahkan sijil kelahiran plaintif kesepuluh menunjukkan bahawa dia telah dilahirkan di Kampung Pujut, Miri yang bercanggah dengan keterangannya bahawa dia telah dilahirkan di tanah HAAW yang dituntut oleh mereka (lihat perenggan 14 & 15).

(2) Plaintif-plaintif telah membuat salasilah keluarga sebelah nenek mereka dan bukan dari keluarga belah datuk mereka. Salasilah keluarga ini tidak menunjukkan adik-beradik datuk mereka. Salasilah keluarga ini tidak disahkan oleh mana-mana ketua kampong atau Pegawai Daerah bahawa ia adalah betul (lihat perenggan 16).

(3) Plaintif-plaintif telah mempli bahawa tanah HAAW yang dituntut adalah di Sg Adong. Mereka tidak mempli secara spesifik bahawa tanah HAAW yang dituntut oleh mereka terletak di Sg Adong Besar atau di Sg Adong Kechil. Mereka juga tidak mempli atau mengemukakan apa-apa keterangan bahawa mereka dibenarkan bercucuk tanam atas tanah temuda di Sg Adong atau bahawa nama-nama nenek moyang atau ibu bapa mereka tersenarai dalam warta itu untuk membenarkan mereka bercucuk tanam atas tanah tersebut. Mereka juga tidak mempli bahawa mereka mempunyai kaitan denga Surin Jamban atau menuntut tanah HAAW itu di bawah Surin Jamban (lihat perenggan 17).

(4) Kawasan-kawasan dalam lesen hutan termasuklah tanah HAAW yang dituntut oleh plaintif-plaintif telah dijadikan kawasan pembalakan oleh syarikat ini sejak 1966. Sejak itu plaintif-plaintif tidak mengadu atau mengambil apa-apa tindakan bahawa tanah HAAW mereka telah salah dijadikan kawasan pembalakan atau dicerobohi oleh Chip Foh Sm Co Ltd atau bahawa defendan-defendan kedua dan ketiga dengan salah dikeluarkan lesen pembalakan tanpa persetujuan mereka atau tanpa apa-apa pampasan kepada mereka untuk kayu balak yang diperoleh dari tanah HAAW mereka (lihat perenggan 19).

(5) Plaintif-plaintif tidak mengadu atau mengambil apa-apa tindakan terhadap defendan-defendan untuk pemberi milikan tanah mereka kepada defendan pertama atau untuk tanah mereka dimajukan tanpa apa-apa pampasan kepada mereka. Jika plaintif-plaintif mempunyai tuntutan yang tulen atau boleh dipercayai terhadap tanah itu, mereka sepatutnya telah mengambil tindakan untuk melindungi kepentingan mereka dalam tanah itu secepat mungkin. Walaupun tanah yang dituntut oleh mereka sebagai HAAW mereka termasuk dalam Hutan Simpan Baram Bawah, telah diberikan untuk pembalakan dan kemudian

diberi milik kepada defedan pertama, plaintif tidak berbuat demikian. Mereka tidak menggunakan hak mereka hampir 47 tahun. Ini menimbulkan keraguan berhubung tuntutan mereka ke atas tanah itu (lihat perenggan 20–21).

(6) Plaintif-plaintif tidak dapat mengenal pasti bidang tanah masing-masing yang dimiliki mereka. Sekali lagi ini menimbulkan keraguan tentang kebolehpecayaan mereka dan tuntutan ke atas tanah itu (lihat perenggan 22).

(7) Atas imbangan kebarangkalian, plaintif-plaintif tidak dapat membuktikan bahawa mereka telah memperoleh dan/atau mewarisi tanah yang dituntut mereka. Berdasarkan keterangan yan dikemukakan semasa perbicaraan, Sapiee bin Gani dan plaintif pertama hanya mula bercucuk tanam atas tanah yang dituntut mereka di Sg Adong sejak lebih kurang 10 hingga 15 tahun lalu. Tiada bukti dokumentar atau sebaliknya bahawa nenek moyang mereka telah menduduki atau mengusahakan tanah di Sg Adong yang dituntut mereka sejak 1947 atau sebelum oleh mereka. Keteragan yang dikemukakan semasa perbicaraan menunjukkan bahawa mereka tidak memperoleh HAAW atas tanah menurut undang-undang di Sarawak (lihat perenggan 26).]

Notes

For cases on claim of, see 8(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 3205–3210.

Cases referred to

SOP Plantations (Suai) Sdn Bhd v Ading Ak Layang & Ors [2004] 4 MLJ 180, HC (refd)

Harrison Ngau (HNL & Co) for the plaintiffs.
Shankar Ram (Thomas, Shankar Ram & Co) for the first defendant.
Mcwillyn Jok (Sarawak Attorney General's Chambers) for the second and third defendants.

Stephen Chung JC:

[1] The plaintiffs claimed an area of land comprising 161.32 acres more or less situate at Sg Adong, Pujut, Miri as their native customary rights ('NCR') land. The location and boundary of their NCR land is edged in red and shown in a map marked as 'X' attached to the statement of claim.

[2] The plaintiffs pleaded that the second, third and fourth plaintiffs are the children of the first plaintiff. The eighth and tenth plaintiffs are the cousins of the first plaintiff whereas the fifth, sixth, seventh, ninth, tenth and twelfth plaintiffs are the nephews and nieces of the first plaintiff. The plaintiffs are *Jati*

Meirek, they called themselves Malay and natives of Sarawak. The plaintiffs testified that they have inherited the NCR land from their parents and or grandparents who had settled on the land during the Japanese occupation in Sarawak.

[3] At the commencement of the trial the parties agreed to the authenticity of the documents in the bundles of documents, the contents of the documents were subject to proof.

[4] The second and third defendants have produced TWO locality maps of the land claimed by the plaintiffs at Sg Adong (see pp 54–55 of BOD7). The NCR land claimed by the plaintiffs approximated to 85.9 hectares. Based on the aerial photographs taken in 1947, 26.8 hectares of the land claimed by the plaintiffs were still covered by virgin jungle whereas 58.9 hectares of the land had been cleared for cultivation. The cleared area within the claimed NCR land had increased to 62 hectares based on aerial photographs taken in 1961 (see p 55 of BOD7). As at 1961, 23.8 hectares of the land within the claimed NCR land were still virgin jungle, had not been cleared for settlement or cultivation and could not be claimed by the plaintiffs as part of their claimed NCR land.

[5] The question is whether the grandparents of the first plaintiff had cleared and acquired NCR over the cleared areas of land as shown in this locality map as at 1947. The burden is on the plaintiffs to prove the acquisition or inheritance of NCR in accordance with the laws in Sarawak see *SOP Plantations (Suai) Sdn Bhd v Ading Ak Layang & Ors* [2004] 4 MLJ 180.

[6] The first plaintiff died on 25 May 2013 at the age of 89 years old. The plaintiffs have included a statutory declaration of the first plaintiff, which was affirmed on 3 January 2013, in the bundle of documents marked as BOD1. In para 4 of the statutory declaration, the first plaintiff said that his father was Jaya bin Awang Abu Bakar and his mother was Halipah bt Jamban who had passed away at their house at Sg Adong at the end of the Japanese occupation. His father had a brother by the name of Daham, a foster brother Deka and foster sister Ot, all of whom had passed away.

[7] In para 7 of the statutory declaration, the first plaintiff said that his parents had seven children. He was the fourth child in the family. He was born in 1924. He said their parents adopted a son called Ot bin Jaya. All his siblings had passed away including Ot bin Jaya except his brother Ramli bin Jaya and himself. The first plaintiff said he was born on their NCR land.

[8] The first plaintiff said his father used to tell him that his grandparents had cleared and settled on the land during the era of the Brookes' Administration. He said his father continued to clear additional areas adjacent

to the land. The first plaintiff said his family including himself had continued to farm the land until the present time. He said he started farming when he was six years old. He said subsequently his nephews and nieces came and joined him and his family to farm at the land. They continued to plant groundnuts, bayam, bittergourd, yam, maize, banana, pineapple, rubber trees and later, some oil palm trees. He said because their NCR land was big he decided that each family to cultivate their respective portions of the land and to cultivate the same permanently. He said it took 20 minutes by paddling a boat from Pujut 1 to get to the land.

[9] The first plaintiff said that in 2008 as he was getting old he moved to stay with one of his children. Other families who cultivated the land adjacent to their land in Sg Adong were the families of Surati bt Asit, Sapiee bin Gani and Aris bin Gani. He verily believed that his grandparents and his parents had acquired NCR over the land.

[10] The first plaintiff affirmed that he found out that parts of their NCR land were alienated to the first defendant by the second and third defendants. He said they did not receive any notice of the alienation of their land to the first defendant. He was also not aware that their NCR over the land had been extinguished by the second and third defendants when it was alienated to the first defendant. He said the first defendant had cleared their house and farms on the land and until now none of the defendants have paid any compensation to them. The plaintiffs had referred to the photographs taken in 1990 of their gardens and which were bulldozed by the first defendant in 2009 (see pp 8–13 of BOD2 and pp 8–11 of BOD1).

[11] The tenth plaintiff ('PW2') was born in 1947 and was 66 years old at the time of the trial. He is the cousin of the first plaintiff. His father was Daham bin Ot. PW2 testified that he was born at their house on the right bank of Sg Adong. The land which he is claiming is on the left bank of Sg Adong, directly opposite of their house. He testified that when he was young he used to follow his parents to go to their farm across the river.

[12] The eleventh plaintiff ('PW10') testified that she was born in 1932 and she used to live in their house at Sg Adong. Her father was Ot bin Selat. She had two brothers Salim bin Ot and Daham bin Ot. They had passed away. She said the fifth plaintiff is the son of Salim bin Ot. The fifth plaintiff did not testify in the trial and did not confirm the testimony of PW10. In para 1.2 of the statement of claim, apparently the eleventh plaintiff was referred to as the tenth plaintiff as a nephew of the first plaintiff. Obviously, from the family tree annexed to the witness statement (WSP9) of the second plaintiff ('PW9'), the eleventh plaintiff is a niece and not a nephew of the first plaintiff.

[13] The twelfth plaintiff ('PW8') testified that he was born in 1953 and a nephew of the first plaintiff. He said his mother is Esah bt Jaya and the elder sister of the first plaintiff. He said he was ten years old when he first went to the land with his parents. He did not testify where he was born and he did not testify that he was born at the NCR land.

[14] The second plaintiff ('PW9'), third plaintiff ('PW1'), fourth plaintiff ('PW6') and sixth plaintiff ('PW7') gave similar evidence in the trial. From the testimonies of the plaintiffs, they did not have any personal knowledge on the acquisition of the NCR land by their great or grandparents except what they had been told by their parents. The plaintiffs did not produce any documents to support their claim to the NCR land in particular to the acquisition of the land by their great grandparents prior to 1 January 1958.

[15] The plaintiffs did not produce any birth certificate of the first plaintiff that he was born at the NCR land at Sg Adong claimed by them. The eighth and eleventh plaintiffs did not have any birth certificate to confirm that they were born at the said NCR land. The birth certificates of the plaintiffs showed that none of them were born at the NCR land claimed by them or at Sg Adong. In fact the birth certificate of the tenth plaintiff showed that he was born at Kampung Pujut, Miri which contradicted his testimony that he was born at the NCR land claimed by them.

[16] The plaintiffs have produced their family tree descending from their great grandfather Jamban and great grandmother Minah. This family tree is from their grandmother's side (Hilipah bt Jamban) and not from their grandfather's side of the family. This family tree did not show the siblings of their grandfather. This family tree has not been certified by any ketua kampong or the district office that it is correct.

[17] The first defendant has produced *gazette* notification No 1806 published in the Sarawak Government *Gazette* dated 8 October 1965 (pp 21–22 of BOD3) which declared an area of 105,500 acres as the Lower Baram Forest Reserve (Third Extension) including Sg Adong and Sg Adong Kechil. It stated that 'the following people may farm in the existing temuda situated in Sungai Adong Besar and Sungai Adong Kechil' which included 'Surin bin Jamban of Pujut to farm at Sungei Adong Besar'. The plaintiffs pleaded that their claimed NCR land was or is at Sg Adong. They did not specifically plead that their claimed NCR land was situated at Sg Adong Besar or at Sg Adong Kechil. They also did not plead or lead any evidence that they were allowed to farm the temuda land at Sg Adong or that their grandparents' or parents' names were listed in the *gazette* to allow them to farm at its land. They also did not plead that they were related to Surin Jamban or had claimed their NCR land under Surin Jamban.

[18] Reading this *gazette* notification the claimed NCR land of the plaintiffs at Sg Adong was within the Lower Baram Forest Reserve (see p 45 of BOD7). Since 1965 the plaintiffs did not complain that their NCR land had been included in the Lower Baram Forest Reserve without their consent or knowledge or that they were not allowed to farm their land within the forest reserve or that they were not compensated for their NCR land.

[19] The second and third defendants have produced a locality map of the plaintiffs' claimed NCR land within the forest areas covered by Timber Licence No T/0003 issued to Chip Foh Sm Co Ltd on 1 January 1966 (pp 17–45 of BOD7). The evidence showed that the areas within the forest licence including the NCR land claimed by the plaintiffs had been logged by this company since 1966. Since then the plaintiffs did not complain or take any action that their NCR land had been wrongfully logged or trespassed by Chip Foh Sm Co Ltd or that the second and third defendants had wrongfully issued the timber licence without their consent or without any compensation to them for the timber extracted from their NCR land.

[20] The evidence showed that Lot 6434 Block 10 Kuala Baram Land District and Lot 3247 Block 11 Kuala Baram Land District were alienated to the first defendant on 20 July 1995 and Lot 819 Block 13 Kuala Baram Land District was alienated to the first defendant on 21 August 1997. These three parcels of land were approved for development as the Tudan Special Development Area vide *gazette* notification Swk LN 115 published on 27 December 2001. Since then the plaintiffs did not complain or take any action against the defendants for the alienation of their land to the first defendant or for their land to be developed without any compensation to them. When the first defendant commenced clearing the land in 2009, the plaintiffs also did not take any immediate action against the first defendant although the plaintiffs had by a letter dated 24 November 2008 (pp 1–4 of BOD3) and by another letter dated 20 February 2009 (pp 5–13 of BOD3) demanded for compensation for their land alienated to the first defendant.

[21] If the plaintiffs have a genuine or credible claim to the land, they should have taken action to protect their interests in the land as soon as possible. Despite the land claimed by them as their NCR had been included in the Lower Baram Forest Reserve, given to a company for logging and subsequently alienated to the first defendant, the plaintiff did not do so. They sat on their rights for nearly forty seven years. These raised serious doubts on their claims to the land.

[22] As stated above, their claimed NCR land is shown in the map marked as 'X'. The map showed that there are nineteen plots of land within the claimed NCR land. The first, second, third and fourth plaintiffs did not testify which of

the plots of land were or are claimed by them or belonged to them. Similarly the other plaintiffs did not testify which plots of land are claimed by them or belonged to them. The first plaintiff in his statutory statement had said that Suriati bt Asit, Sapiee bin Gani and Aris bin Gani also cultivated on the land adjacent to their land. He did not testify or explain which plots of land belonged to Suriati bt Asit, Sapiee bin Gani and Aris bin Gani and whether these plots of land were within or adjacent to their NCR land. The plaintiffs have not been able to identify their respective parcel(s) of land to belong to them. Again this raised doubts on their credibility and claims to the land.

[23] The evidence showed that by a letter dated 26 August 1992 (pp 30–35 of BOD3), 118 persons had applied to the District Office, Miri for land at Sg Adong to be given to them for farming. The application letter stated that many of these persons had been farming the land at Sg Adong for many years; for example Sapiee bin Gani and Alek bin Tahar had been farming at the land for about 15 years whereas Hj Hussien, Juli Suhaili and Mat Sudin Ibrahim had been farming at the land for about ten years. The first plaintiff, the sixth plaintiff, the ninth plaintiff, the tenth plaintiff and the twelfth plaintiff were included in this list as applicants for the land at Sg Adong. Based on this letter, if they had farmed at the land at Sg Adong they would have done so for about 10–15 years only, not prior to 1 January 1958. The plaintiffs did not call Nasiah bte Dahlan, the writer of the letter, to disprove the contents of this letter.

[24] Since the first plaintiff had affirmed that Sapiee bin Gani was farming the land adjacent to his farms at Sg Adong, and based on the letter dated 26 August 1992, Sapiee bin Gani had only been farming at Sg Adong for about 15 years and not prior to 1 January 1958. This letter, on behalf of some of the plaintiffs and Sapiee bin Gani, had contradicted their claims that they have acquired and or have inherited their claimed NCR land at Sg Adong prior to 1 January 1958.

[25] The evidence showed that Sapiee bin Gani and others had sued the first, second and third defendants in Suit No 21–01 of 2009 (MR)/1, inter alia, for a declaration that they had acquired NCR over an area of land at Pujut Sungai Adong, Miri. This suit was consolidated for trial with Suit No 21–02 of 2009. After the full trial, the presiding High Court judge ruled that the plaintiffs in those suits had failed to establish that they had acquired NCR over their claimed land at Sg Adong and the suits were dismissed with costs. This again supported the contentions of the defendants that the plaintiffs and Sapiee bin Gani have not acquired and have not inherited NCR over their claimed land at Sg Adong.

[26] In this case, on a balance of probabilities, the plaintiffs have not

established that they have acquired and or inherited NCR over their claimed land. Based on the evidence adduced during the trial, Sapiee bin Gani and the first plaintiff had only farmed at the land claimed by them at Sg Adong about 10–15 years ago. There was no documentary proof or otherwise that their great grandparents had settled or cultivated the land at Sg Adong claimed by them since 1947 or before by them. The evidence adduced at the trial showed that they have not acquired NCR over the land in accordance with the laws in Sarawak.

[27] For the reasons given, the plaintiffs' action is dismissed with costs of RM10,000 to the first defendant and RM10,000 to the second and third defendants.

Plaintiffs' claim dismissed with costs.

Reported by Kanesh Sundrum